

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANTHONY BELMOSA,

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant.

JOINT PRE-TRIAL ORDER

Civil Action No. 19-CV-6788

(Cogan, J.)

The parties having conferred among themselves and with the Court pursuant to Federal Rule of Civil Procedure 16, the following statements, directions and agreements are adopted as the Pretrial Order herein.¹

Full Caption of the Action:

Anthony Belmosa v. United States of America, Civil Case No. 19-CV-6788 (Cogan, J.)

Trial Counsel:

<i>For Plaintiff:</i>	<i>For Defendant:</i>
Matthew T. Gammons, Esq. Rosenbaum & Rosenbaum, PC 100 Wall Street New York, NY 10005 212-514-5007 212-574-9178 (fax) mg@rosenbaumnylaw.com	Seth D. DuCharme Acting United States Attorney Eastern District of New York Of Counsel: AUSA Matthew J. Modafferi 271-A Cadman Plaza East Brooklyn, NY 11201 718-254-6229 718-254-6081 (fax) Matthew.modafferi@usdoj.gov

Jurisdiction

This matter falls under the Federal Tort Claims Act (28 U.S.C. § 2671). Defendant does not dispute jurisdiction.

¹ This Pre-trial Order relates to the liability portion of the case. The parties respectfully note that fact discovery has concluded and they reserve the right to conduct expert discovery, if necessary.

Claims and Defenses to be Tried:

By Plaintiff:

Plaintiff alleges that on August 22, 2016, while making a delivery at the United States Postal Service (“USPS”) location at JFK International Airport (“JFK”), he stepped out of his truck and tripped and fell due to a defect in the pavement of the cargo roadway. Plaintiff alleges that the USPS was negligent in failing to properly inspect, repair and maintain the pavement where Plaintiff fell.

By Defendant:

The United States denies Plaintiff’s allegations in their entirety, and asserts the following defenses:

1. The United States did not breach any duty and was not negligent.
2. The United States submits that the pavement in question was not defective, and should the Court find that a defect existed, any such defect was trivial.
3. The United States did not have actual or constructive notice of any alleged defective condition.
4. No acts or omissions by the United States were the proximate cause of any injury sustained by Plaintiff.
5. Plaintiff’s negligence was the proximate cause of the damages alleged in the Complaint.

Should the Court find that Plaintiff has met his burden of proving negligence, the United States reserves the right to include additional affirmative defenses relating to Plaintiff’s claims for damages.

Jury/Non-Jury

As the instant matter concerns the Federal Tort Claims Act, the matter is to be tried without a jury. The parties anticipate needing approximately one day for the liability portion of the case.

Trial Before Magistrate Judge:

The parties do not consent to a trial by magistrate judge.

Stipulations

None at this time.

Witnesses

By Plaintiff:

Plaintiff intends to call the following witnesses in his case-in-chief:

1. Alfred Haywood, USPS Maintenance Manager at the JFK USPS facility – actual or constructive notice of the defective condition and failure to maintain.
2. Plaintiff, Anthony Belmosa – the facts and circumstances of the incident that occurred on August 22, 2016 and Defendant’s notice of the condition.

By Defendant:

The United States reserves the right to call the witnesses listed by Plaintiff in its case-in-chief, including Alfred Haywood – for the USPS’s lack of actual or constructive notice of any alleged defective condition.

Deposition Testimony:

The parties do not intend to introduce deposition testimony in their respective case-in-chief, but reserve the right to use prior sworn testimony for impeachment.

Exhibits:

By Plaintiff:

Exhibit	Objection	Basis for Objection
1. Two Photographs of the pavement taken by Plaintiff	None	

Plaintiff reserves the right to use and/or introduce into evidence, for any purpose, exhibits listed on both parties' exhibit list. Plaintiff also reserves the right to amend this exhibit list for good cause and/or to prevent manifest injustice.

By Defendant:

Exhibit	Objection	Basis for Objection
A. Google Map overhead view of the USPS JFK facility	None	
B. Citimedical Examination Report, dated February 8, 2018	None	

The United States reserves the right to use and/or introduce into evidence, for any purpose, exhibits listed on Plaintiff's exhibit list. The United States also reserves the right to amend this exhibit list for good cause and/or to prevent manifest injustice.

Relief Sought

Plaintiff seeks compensation for physical injuries suffered as a result of the trip and fall on August 22, 2016.

Defendant disputes that Plaintiff sustained any physical injuries as a result of any actions by Defendant, and respectfully requests that this Court find that the Defendant is not liable to Plaintiff. Should the Court find that Plaintiff has met his burden of proving negligence, the United States reserves the right to object to the relief sought by Plaintiff.

SO ORDERED.

Dated: Brooklyn, New York
, 2020

HONORABLE BRIAN. M. COGAN
United States District Judge